

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**Securities Exchange Act of 1934**  
**Release No. 57825 / May 15, 2008**

**Administrative Proceeding**  
**File No. 3-11359**

**In the Matter of**

**Alliance Capital Management, L.P.**

**Respondent.**

**ORDER APPROVING DISTRIBUTION  
PLAN, APPOINTING A FUND  
ADMINISTRATOR, AND WAIVING  
BOND**

**I.**

In January 2004, the Commission instituted settled administrative and cease-and-desist proceedings against Alliance Capital Management, L.P. (“Alliance” or “Respondent”) for violations of the federal securities laws in connection with market timing in the Alliance mutual fund complex (the “Alliance Funds”). On January 15, 2004, the Commission issued an order providing for the payment of disgorgement and civil penalties totaling \$250 million. It further provided that a Fair Fund (the “Alliance Fair Fund”) be established and distributed pursuant to a distribution plan developed by an Independent Distribution Consultant (“IDC”) retained by Respondent.

In addition to the \$250 million paid by Alliance, the Alliance Fair Fund received proceeds for distribution from other related cases filed by the Commission. On December 23, 2003, the Commission filed a civil injunctive action against Daniel Calugar (“Calugar”) and Security Brokerage, Inc. (“SBI”) in *SEC v. Calugar*, Civ. No. 03-1600 RCJ (RJJ) (D.Nev.), alleging that Calugar and SBI defrauded mutual fund investors, including Alliance Funds investors, through late trading and market timing. On January 9, 2006, the Commission settled this action, and as part of the settlement, Calugar paid \$153 million in disgorgement and civil penalties. Of this amount, the \$70.38 million representing harm to Alliance Fund investors was transferred into the Alliance Fair Fund for distribution (the “Calugar Settlement”).

On April 28, 2005, the Commission simultaneously instituted and settled administrative and cease-and-desist proceedings against Gerald T. Malone (“Malone”), John D. Carifa (“Carifa”) and Michael J. Laughlin (“Laughlin”), all former Alliance officers, for their roles in the “timing capacity” arrangements at Alliance. The Commission found that Malone, Carifa and Laughlin aided and abetted Alliance Capital’s unlawful conduct. *In the Matter of Gerald T.*

*Malone*, File No. 3-11914, Investment Advisers Act of 1940 Release No. 2378, and Investment Company Act of 1940 Release No. 26858 (Apr. 28, 2005); *In the Matter of John D. Carifa*, File No. 3-11915, Investment Advisers Act of 1940 Release No. 2379, and Investment Company Act of 1940 Release No. 26859 (Apr. 28, 2005); *In the Matter of Michael J. Laughlin*, File No. 3-11916, Exchange Act Release No. 51624, Investment Advisers Act of 1940 Release No. 2380, and Investment Company Act of 1940 Release No. 26860 (Apr. 28, 2005). Pursuant to these orders, between April 28, and May 4, 2005, Malone, Carifa and Laughlin paid \$150,001, \$375,001, and \$325,001, respectively, in disgorgement and civil penalties. These funds were also transferred into the Alliance Fair Fund for distribution.

Thus, the total assets available for distribution under the Alliance Fair Fund are approximately \$321.23 million, comprised of the \$250 million from the Alliance Settlement, the \$70.38 million from the Calugar Settlement and the total of \$850,003 paid by Malone, Carifa and Laughlin, plus interest earned.

In October 2004, Respondent selected Marshall E. Blume, a Professor of Financial Management and Director of the Rodney L. White Center for Financial Research at the Wharton School of the University of Pennsylvania in Philadelphia, to serve as the Alliance Fair Fund's IDC. Since that time, the IDC has developed a proposed distribution plan (the "Alliance Plan" or the "Plan") in consultation with the staff, the Respondent and the Independent Directors of the affected Alliance Capital Funds.

On February 28, 2008, the Commission's Division of Enforcement submitted the Alliance Plan to the Commission. The Alliance Plan provides for the allocation and distribution of the Alliance Fair Fund, including any accrued interest, to eligible accountholders as compensation for losses suffered by shareholders of the mutual funds due to market timing activities facilitated by Respondent for the period between January 2001 and September 2003.

In accordance with the Commission's Rules on Fair Fund and Disgorgement Plans (the "Fair Fund Rules"), 17 C.F.R. § 201.1100, *et seq.*, the Plan proposes a Fund Administrator and sets forth, among other things, procedures for the distribution of proceeds to the Alliance Funds; the identification of eligible recipients of proceeds from the Alliance Fair Fund; procedures for providing notice to such recipients of the existence of the Alliance Fair Fund and their potential eligibility to receive proceeds; procedures for the administration of the Fund, including provisions for filing tax returns; and a proposed timeframe for the termination of the Alliance Fair Fund.

Rust Consulting, Inc., proposed in the Plan as the Fund Administrator, has not posted the bond generally required of third parties under Fair Fund Rule 1105(c). Rather, the Plan incorporates several layers of protection for the Alliance Fair Fund. Among other things, under the Plan: (1) the Fund Administrator will have no custody, and only restricted control, of the Alliance Fair Fund; (2) assets of the Alliance Fair Fund will be held by Treasury until immediately before transmittal of checks or wires to eligible investors; (3) upon transfer from Treasury, funds will be held in an escrow account, separate from the Escrow Bank's assets<sup>1</sup> until

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<sup>1</sup> The "Escrow Bank" refers to Deutsche Bank as described in ¶ 7.2.2 and ¶ 9.3 of the Plan.

a check or wire is presented, at which time funds will be transferred to a controlled distribution account; (4) upon presentment of checks or wire instructions, funds will be subject to a “positive pay file” system before being honored by the Escrow Bank; and (5) both the Escrow Bank and the Fund Administrator will maintain, throughout this process, insurance and/or a financial institution bond that covers errors and omissions, misfeasance and fraud; and (6) because the disbursements to investors will be made in tranches, at no time will the funds held at the Escrow Bank equal or exceed the amount covered by the insurance.

On March 13, 2008, the Commission published the Plan and issued a Notice of Proposed Distribution Plan and Opportunity for Comment (Exchange Act Release No. 57489) pursuant to Fair Fund Rule 1103, 17 C.F.R. § 201.1103. The Notice advised interested parties that they could obtain a copy of the Plan at <http://www.sec.gov>, or by submitting a written request to Gerald Gross, Assistant Regional Director, United States Securities and Exchange Commission, Room 4300, 3 World Financial Center, New York, NY 10281-1022. The Notice also advised that all persons desiring to comment on the Plan could submit their comments, in writing, no later than April 14, 2008. No comments were received by the Commission in response to the Notice and no significant modification has been made to the Plan since its publication.<sup>2</sup>

After careful consideration, the Commission has determined that the Plan will be approved. The Commission has further determined that, for good cause shown, the bond required under Fair Fund Rule 1105(c) will be waived. Fair Fund Rule 1105(c) provides:

Administrator to Post Bond. If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

17 C.F.R. § 201.1105(c). The Commission believes that the risk protection provisions of the Plan, generally included in ¶¶ 7.1 to 7.2, and the high cost of bond coverage, suffice to constitute good cause for waiving the posting of the bond under Rule 1105(c).<sup>3</sup>

Accordingly, IT IS ORDERED that:

- A. Pursuant to the Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1104, that the Distribution Plan, as modified, is approved;

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<sup>2</sup> Some minor typographical and administrative changes have been made to the proposed Plan for clarity and accuracy.

<sup>3</sup> Based on estimates provided to the staff of the Commission, the cost of a bond could be in the millions of dollars.

- B. Pursuant to the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1105(a), Rust Consulting, Inc., is appointed as the Fund Administrator; and
- C. The bond requirement of Rule 1105(c) of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1105(c), is waived for good cause shown.

For the Commission, by its Secretary, pursuant to delegated authority.

Nancy M. Morris  
Secretary